

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**DEVERICK SCOTT
ADC #131042**

PLAINTIFF

V.

CASE NO. 5:14-CV-237 SWW/BD

RAY HOBBS, et al.

DEFENDANTS

PARTIAL RECOMMENDED DISPOSITION

I. Procedures for Filing Objections:

This Partial Recommended Disposition (“Recommendation”) has been sent to United States District Judge Susan Webber Wright. Any party may file written objections to this Recommendation.

Objections must be specific and must include the factual or legal basis for the objection. An objection to a factual finding must identify the finding of fact believed to be wrong and describe the evidence that supports that belief.

An original and one copy of your objections must be received in the office of the United States District Court Clerk within fourteen (14) days of this Recommendation. A copy will be furnished to the opposing party.

If no objections are filed, Judge Wright can adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may also waive any right to appeal questions of fact.

Mail your objections to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

II. Discussion:

Deverick Scott, an Arkansas Department of Correction (“ADC”) inmate, filed this lawsuit pro se alleging that the Defendants violated several of his constitutional rights. (Docket entry #2) Because of the number of unrelated claims included in his original complaint, Mr. Scott was instructed to file an amended complaint. (#4) Mr. Scott has now complied with the Court’s order. (#5)

Based on the allegations in Mr. Scott’s amended complaint, the Court has already determined that Mr. Scott adequately stated a first amendment retaliation claim against Defendants Ray Hobbs, Larry Mae, Grant Harris, Warden Watson, Warden Jackson, Mark Stephens, James Pruitt, Sergeant Hyguart, Stephen Watson, Officer Davenport, and Officer Hopkins. Service on that Defendants has been ordered. His claims against Defendants Banks, Meinzer, Jefferson, and Robinson, however, should be DISMISSED, without prejudice. In addition, his claims against the ADC should be DISMISSED, with prejudice.

Mr. Scott identified Defendants Banks, Meinzer, Jefferson, and Robinson as Defendants in his original complaint, but he did not identify those individuals as Defendants in his amended complaint; nor did he attribute any unconstitutional conduct to

any of them in the body of his complaint. Because an amended complaint supercedes an original complaint, Mr. Scott's claims against these Defendants should be dismissed. *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000).

Furthermore, it is settled law that the ADC is not a "person" for purposes of 42 U.S.C. § 1983, so it is not an entity that can be sued under that statute. *Brown v. Missouri Dept of Corr.*, 353 F.3d 1038, 1041 (8th Cir. 2004) (per curiam).

III. Conclusion:

The Court recommends that Mr. Scott's claims against Defendants Banks, Meinzer, Jefferson, and Robinson be DISMISSED, without prejudice. His claims against the ADC should be DISMISSED, with prejudice.

DATED this 17th day of July, 2014.



UNITED STATES MAGISTRATE JUDGE